

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

<b>ROYAL BENSON, M.D., <i>et al</i>,</b>	§
	§
<b>Plaintiffs,</b>	§
<b>v.</b>	§ <b>CIVIL ACTION NO. H-04-04323</b>
	§
<b>ST. JOSEPH REGIONAL HEALTH CENTER, <i>et al</i>,</b>	§
	§
<b>Defendants.</b>	§

**MEMORANDUM AND ORDER**

Pending before the Court is Plaintiffs' Motion for Protective Order (Doc. # 132). For the following reasons, Plaintiffs' motion is **DENIED**.

Plaintiffs seek to prevent Defendants from obtaining Dr. Benson's peer review records from non-party facilities The Physicians Centre and College Station Medical Center. Plaintiffs argue that these peer-review materials are irrelevant to the parties' asserted claims and defenses in this case. Conversely, Defendants contend that Plaintiffs have repeatedly compared Dr. Benson's performance and reviews at other medical facilities to his peer reviews at Defendant St. Joseph Regional Health Center, thereby opening the door to discovery of these non-party facility reviews.

The Court agrees that Plaintiffs' contentions as to Dr. Benson's allegedly excellent performance at other medical facilities have made relevant his reviews at other medical facilities. Plaintiffs have, for example, asserted that "Benson has consistently provided exemplary care to his patients since moving to Brazos County. By remaining on the cutting-edge of OB/GYN practice, Benson has produced outcomes for his patients which exceeded the standard of care in the county." Pls.' Second Am. Compl. ¶ 43. At a hearing before the Court on February 8, 2006,

Plaintiffs' counsel similarly asserted instances of Dr. Benson's care having been characterized as exemplary. Defendants are entitled to evidence of Dr. Benson's reviews at other facilities so that they may attempt to rebut these claims.

Additionally, Dr. Benson's reviews by other facilities are relevant to Dr. Benson's allegations as to Defendants' motive for negative assessments of Dr. Benson – that they were jealous of his success. Likewise, the degree of similarity of Defendants' reviews to those of other facilities that reviewed Dr. Benson are relevant to the integrity and accuracy of Defendants' peer review process. Defendants are therefore entitled to Dr. Benson's peer reviews from non-party medical facilities, and Plaintiff's Motion for Protective Order is **DENIED**.

**IT IS SO ORDERED.**

**SIGNED** this 13th day of February, 2006.



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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL  
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY  
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.